

1423 Rec'd PCT 18 JAN 2006

#7
PCT



Patent

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

Inventor: Andre VAN DYK	Examiner: Unassigned
Serial No: 10/500,356	Art Unit: Unassigned
Filed: June 30, 2004	Confirmation No.: 2407
Docket No.: VAND3026/FJD	Customer No.: 23364
For: ACTIVATED STEMMING DEVICE	

RENEWED PETITION UNDER 37 CFR 1.47(b)

MAIL STOP PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
- 1 MAR 2006
Legal Staff
International Division

Sir:

Receipt of the Decision dated November 18, 2005 is noted.

Reconsideration is respectfully requested in view of the following:

The Decision notes that 37 CFR 1.47(b) sets forth six (6) requirements that must be met to have an application accepted under 37 CFR 1.47(b), and that requirements (1), (3), (4) and (5) have been met but not requirements (2) and (6).

Requirement (2) relates to "factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort."

In discussing the evidence presented, the Decision notes that "It is not clear that Van Dyk was ever presented with a complete copy of the above-identified application including the specification, drawings and claims as well as an oath or declaration." In an e-mail dated 17 December 2004 which was addressed to Mr. Van Dyk, a full copy of the specification, claims, declaration, power of attorney and assignment document were sent as attachments. The Decision notes: "... there is no clear indication as to which applications the e-mail pertains. Further, the e-mail includes twenty-one

attachments, none of which are clearly labeled as being directed to any particular application. As such, it is unclear as to which applications the e-mail is directed".

Your Petitioner cannot agree with the noted conclusion. The application had a title and a specification and the assignment identified the international application number. There can be no doubt what application was being submitted to Mr. Van Dyk, nor could Mr. Van Dyk have any such doubt. The U.S. national phase application identifies the international application as PCT/ZA02/00209. The assignment e-mailed to Mr. Van Dyk also identifies this number. The assignment bears the signature of Mr. Van Dyk. How could Mr. Van Dyk not know that the application that was sent to him is the U.S. equivalent of the noted PCT application.

The Decision also mentions that "... it does not appear that Taberer has first-hand knowledge of exactly which papers were sent to Van Dyk with the letter of 03 May 2005 since it does not appear that Taberer himself mailed the letter of 03 May 2005."

But the Taberer's STATEMENT, which was filed with the Petition, identified specifically what was sent to Mr. Van Dyk in enumerated paragraphs 1 and 2, and in enumerated paragraphs 3 and 4 the steps taken thereafter to obtain an executed application. It is clear from enumerated paragraph 3 that Mr. Van Dyk had no intention of signing.

Mr. Taberer's STATEMENT does not mention that the documents identified in enumerated paragraphs 1 and 2 were placed in the mail by him, but why is that even necessary. He attests to their existence, and that they were sent. That should be sufficient.

It is respectfully submitted that requirement (2) has been met.

Requirement (6) relates to "... showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage."


NXCO International Limited is the owner of PCT/ZA02/00209. That should be clear from the evidence of record. Then from enumerated paragraph 3 of Mr. Taberer should also be clear that Mr. Van Dyk "would not" sign the Declaration. Certainly,

NXCO International Limited would be irreparably damaged if no corresponding U.S. application were filed since that was the purpose for filing the PCT application.

It is respectfully submitted that Requirement (6) has been met.

Upon reconsideration, acceptance of this application pursuant to 37 CFR 1.47(b) is respectfully requested.

Respectfully submitted,
BACON & THOMAS, PLLC



Felix J. D'Ambrosio
Reg. No. 25,721

Date: January 18, 2006

BACON & THOMAS, PLLC
625 Slaters Lane
4th Floor
Alexandria, VA 22314
(703) 683-0500

S:\Producer\jfd\CLIENTS\McCallum Rademeyer & Freimond\VAND3026\Jan 18 2006 response.wpd